

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JACOB KELLNER, as President and CEO,
and I&L DISTRIBUTING, INC.,

Plaintiffs,

v.

EV 1000 LLC and ELION PARTNERS,

Defendants.

Civil Action No. 22-5753 (RK) (RLS)

MEMORANDUM ORDER

KIRSCH, District Judge

THIS MATTER comes before the Court upon the Report and Recommendation of the Honorable Rukhsanah L. Singh, U.S.M.J., entered in this matter on April 16, 2024. ("R&R", ECF No. 38.) The R&R recommends dismissing Plaintiffs Jacob Kellner's and I&L Distributing, Inc.'s Complaint, (ECF No. 1), without prejudice pursuant to Federal Rule of Civil Procedure 41(b).

The relevant procedural history is recounted in detail in Judge Singh's thoughtful and thorough R&R, which this Court adopts in full. (*See* R&R at 1-4.) Judge Singh chronicles Plaintiffs' failure to retain new counsel for over a year after their previous counsel was permitted to withdraw, failure to abide by court orders to retain new counsel or respond to orders to show cause, and failure to otherwise prosecute their claim. (*Id.*) The Court's November 1, 2023 Order to Show Cause ordered Plaintiffs to respond by December 4, 2023, warned Plaintiffs that the matter would be dismissed if they failed to respond, and ordered Defendants, EV 1000 LLC and Elion Partners, to serve the Order on Plaintiffs. (*Id.* at 3 (citing ECF No. 35).) Defendants filed proof of service the following week, (*id.* (citing ECF No. 36)), and Plaintiffs did not respond to the Order to Show Cause.

In her April 16, 2024 R&R, Judge Singh recommends dismissing Plaintiffs' Complaint pursuant to Rule 41(b) for failure to prosecute and comply with court orders, and pursuant to Rule 16 for failing to obey a scheduling or pretrial order. (*Id*) Judge Singh evaluated and balanced the six factors under *Paulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984), finding that five of the six factors weigh in favor of dismissal and one could not be evaluated based on the inadequate record before the Court. (*Id* at 4-8.) Accordingly, Judge Singh recommended dismissal without prejudice and ordered that a copy of the R&R be mailed to Plaintiffs' address of record. (*Id* at 8-9.) Pursuant to Local Civil Rule 72.1(c)(2), the parties had fourteen (14) days to object to the R&R. No party filed an objection in response.

The Court has reviewed all relevant documents and submissions in this matter and adopts the R&R without modification.¹ Therefore,

IT IS on this 7th day of May, 2024,

ORDERED that the Court adopts the Report and Recommendation, (ECF No. 38), in its entirety; and it is further

ORDERED that Plaintiffs' Complaint, (ECF No. 1), is **DISMISSED** without prejudice; and it is further

ORDERED that the Clerk of the Court is directed to mail a copy of this Memorandum Order to the address of record for Plaintiffs.


ROBERT KIRSCH
UNITED STATES DISTRICT JUDGE

¹ After dismissal of Plaintiffs' Complaint, Defendants counterclaim remains pending. (ECF No. 15.) On March 27, 2024, Defendants filed a letter indicating that if the Court were to dismiss Plaintiffs' Complaint, Defendants would subsequently move to dismiss their counterclaim pursuant to Rules 41(a)(2) and 41(c).